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APPLICATION NUMBER 09786427	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

AFT UNIT

PAPER NUMBER

DATE MAILED:

This is a communication from the examiner in charge of this application.
 COMMISSIONER OF PATENTS AND TRADEMARKS

NOTICE OF ALLOWABILITY

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1306.

☒ This communication is responsive to the amendment, 5-3-04

☒ The allowed claim(s) is/are 1, 11, 17, 28, 31-33, 38, 40, 41 and 43

☐ The drawings filed on _____ are acceptable as formal drawings.

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. THIS THREE-MONTH PERIOD IS NOT EXTENDABLE FOR SUBMITTING NEW FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION. This three-month period for complying with the REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL is extendable under 37 CFR 1.136(a).

☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

☐ Applicant MUST submit NEW FORMAL DRAWINGS

☐ because the originally filed drawings were declared by applicant to be informal.

☐ including changes required by the Notice of Draftsperson's Patent Drawing Review, PTO-948, attached hereto or to Paper No. _____.

☐ including changes required by the proposed drawing correction filed on _____, which has been approved by the examiner.

☐ including changes required by the attached Examiner's Amendment/Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings.

☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this notice should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER), if applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ Interview Summary, PTO-413

☒ Examiner's Amendment/Comment

☐ Examiner's Comment Regarding Requirement for the Deposit of Biological Material

☒ Examiner's Statement of Reasons for Allowance

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An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Hahn on June 1, 2004.

In claim 11, line 4, "or zinc" has been deleted. Further in line 4, after "and" the phrase -- an oxide, a hydroxide or a sulfuric acid salt of -- has been inserted.

The following is an examiner's statement of reasons for allowance: The claims are allowable over Woltermann (U.S. Pat. 4,454,244) and Bhattacharyya (U.S. Pat. 6,071,433) since the Minigawa Declaration filed under 37 C.F.R. 1.132 on January 22, 2004 provides evidence that the composition recited in applicant's claim 1, which requires the combination of zinc and magnesium, provides a new crystalline structure exhibiting a single X-ray diffraction peak in a region where 2 theta is 33 to 50° and in a region where 2 theta is 60 to 64°. Accordingly any holding that it would be prima facie obvious to employ a combination of zinc and magnesium as the metals in the compositions of Woltermann and Bhattacharyya has been rebutted.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication should be directed to Wayne Langel at telephone number 571-272-1353.

A handwritten signature in black ink that reads "Wayne A. Langel". The signature is written in a cursive, flowing style.

Wayne Langel
Primary Examiner
Art Unit 1754